Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	CC Docket No. 94-97
	)	
Ameritech Operating Companies	)	
Revisions to Tariff F.C.C. No. 2	)	Transmittal No. 819
	)	
Bell Atlantic Telephone Companies	)	
Revisions to Tariff F.C.C. No. 1	)	Transmittal No. 692
	)	
BellSouth Telecommunications, Inc.	)	
Revisions to Tariff F.C.C. No. 1	)	Transmittal Nos. 223, 233, 244
	)	
Cincinnati Bell Telephone Company	)	
Revisions to Tariff F.C.C. No. 35	)	Transmittal Nos. 662, 670
	)	
GTE System Telephone Companies	)	
Revisions to Tariff F.C.C. No. 1	)	Transmittal Nos. 107, 116, 128
	)	
GTE Telephone Operating Companies	)	
Revisions to Tariff F.C.C. No. 1	)	Transmittal Nos. 905, 917, 934
	)	
Southwestern Bell Telephone Company	)	
Revisions to Tariff F.C.C. No. 73	)	Transmittal Nos. 2383, 2388,
	)	2392, 2397, 2407
United and Central Telephone Companies	)	
Revisions to Tariff F.C.C. No. 1	)	Transmittal No. 16
	)	
U S West Communications, Inc.	)	
Revisions to Tariff F.C.C. No. 5	)	Transmittal Nos. 531, 537, 539, 549

ORDER

Adopted: December 9, 1994 ; Released: December 9, 1994

By the Chief, Common Carrier Bureau:

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I. INTRODUCTION

1. On September 1, 1994, the above-captioned Tier 1 local exchange carriers (LECs)[1] filed permanent tariffs offering expanded interconnection through virtual collocation for special access and switched transport services.[2] These tariffs are currently scheduled to become effective on December 15, 1994. Based on our analysis of the record, we find that the LECs' permanent virtual collocation tariffs raise significant questions of lawfulness regarding cost allocations, rate levels, rate structures, and terms and conditions of service that warrant suspension for one day, investigation, and imposition of an accounting order. In addition, we find it necessary to take immediate action regarding certain key issues, such as

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[1] These LECs are listed in Appendix A. The abbreviations for the LECs as indicated in the Appendix are used throughout this Order. In most instances, GTOC and GSTC are referred to collectively as GTE.

[2] As described below, the LECs also filed on September 1, 1994 interim tariffs that were identical in substance to the permanent virtual collocation tariffs. See paragraphs 6-7, infra.

the level of most LECs' proposed overhead loadings for virtual collocation. Based on the current record, we conclude that most LECs have failed to justify their proposed overhead loadings as reasonable under the standard set forth in the Commission's Virtual Collocation Order.[3] We also conclude that based on the record before us, Bell Atlantic's maintenance-related charges appear excessive. Because it appears that most LECs' proposed overhead loadings and Bell Atlantic's maintenance-related charges are unreasonable, we conclude that most of the LECs' rates for virtual collocation are likely to be unreasonably high.

2. To prevent apparently excessive rates from becoming effective while we investigate the LECs' overall proposed rate levels, we partially suspend those rates that appear unreasonable during the remainder of the five-month suspension period pursuant to our authority under Section 204(a) of the Communications Act, 47 U.S.C. § 204(a). Our partial suspension will permit rates that do not appear to be unreasonable to become effective, subject to an investigation and an accounting order, but will prevent apparently unreasonable rates from taking effect while we investigate all of the LECs' overall rate levels. Therefore, our action should ensure that expanded interconnection is available, without interruption, at rate levels that will promote economically efficient competition during the pendency of our investigation. We also reject certain patently unlawful terms and conditions proposed by several LECs, and order certain of the LECs to make other tariff revisions.

3. We will address the other issues that have been raised in a subsequent order. Because the permanent virtual collocation tariffs are identical in substance to the interim virtual collocation tariffs currently subject to investigation in CC Docket No. 94-97, we will consolidate our investigation of the permanent virtual collocation tariffs with the investigation initiated in the interim tariff docket. Our subsequent order will designate specific issues relating to both sets of tariffs and establish a pleading cycle for discussion of those issues. As part of the investigation initiated in this order, LECs may be required to make additional showings, to be specified in our designation order.

II. BACKGROUND

4. On July 25, 1994, the Commission released its Virtual Collocation Order in response to the June 10, 1994 decision of the United States Court of Appeals for the District of Columbia (D.C.) Circuit in Bell Atlantic v. FCC.[4] In Bell Atlantic v. FCC, the Court stated that it would vacate in part the first two of the Commission's expanded interconnection

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[3] Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Memorandum Opinion and Order, 9 FCC Rcd 5154 (1994), appeal docketed sub nom., Southwestern Bell Telephone Company v. FCC, Case No. 94-1547 (D.C. Cir. Aug. 10, 1994) (Virtual Collocation Order).

[4] Bell Atlantic Telephone Companies v. FCC, 24 F.3d 1441 (D.C. Cir. 1994) (Bell Atlantic v. FCC).

orders[5] on the grounds that the Commission did not have authority under the Communications Act of 1934, as amended, to require Tier 1 LECs to provide expanded interconnection through physical collocation.[6] The Court also stated that it would remand the Commission's orders to permit the Commission to consider whether and to what extent to impose virtual collocation requirements in the absence of a physical collocation requirement.[7]

5. The Virtual Collocation Order adopted virtual collocation as the basic architecture for providing expanded interconnection and directed Tier 1 LECs (other than National Exchange Carrier Association pool members) to provide expanded interconnection for both interstate special access and switched transport through generally available virtual

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[5] Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369 (1992) (Special Access Physical Collocation Order), recon., 8 FCC Rcd 127 (1992) (First Reconsideration Order), vacated in part and remanded sub nom. Bell Atlantic v. FCC, 24 F.3d 1441 (D.C. Cir. 1994), recon., 8 FCC Rcd 7341 (1993) (Second Reconsideration Order). See also Expanded Interconnection with Local Telephone Company Facilities, Second Report and Order and Third Notice of Proposed Rulemaking, 8 FCC Rcd 7374 (1993) (Switched Transport Physical Collocation Order), pet. for review pending sub nom. Southwestern Bell Telephone Co. v. FCC, No. 94-1547 (D.C. Cir. Aug. 10, 1994).

[6] In the Special Access Physical Collocation Order, the Commission mandated expanded interconnection through physical collocation, except in limited instances upon Commission approval. The Commission required virtual collocation where physical collocation was not provided, as well as in certain other circumstances. See Special Access Physical Collocation Order, 7 FCC Rcd at 7389-91.

[7] Bell Atlantic v. FCC, 24 F.3d at 1447. Expanded interconnection is a LEC offering that enables parties, by interconnecting their circuits with those of the LEC at a LEC central office through either physical collocation or virtual collocation, to compete on a facilities basis with certain LEC access services. Expanded interconnection through physical collocation is an offering that enables an interconnector to locate its own transmission equipment in a segregated portion of a LEC central office. The interconnector pays a tariffed charge to the LEC for the use of that central office space in which to terminate its transmission links, and may enter the central office to install, maintain, and repair the collocated equipment. Expanded interconnection through virtual collocation is an offering in which the LEC owns (or may lease) and exercises exclusive physical control over the transmission equipment, located in the central office, that terminates the interconnector's circuits. The interconnector has the right to designate its choice of central office equipment, and the LEC dedicates this equipment to the exclusive use of the interconnector. The interconnector pays a tariffed charge to the LEC for virtual collocation services using the dedicated equipment. The LEC provides installation, maintenance, and repair of dedicated equipment on a non-discriminatory basis. See Virtual Collocation Order, 9 FCC Rcd at 5158.

collocation services.[8] The Commission exempted LECs from the mandatory virtual collocation requirement in central offices at which they choose to provide physical collocation under tariff, subject to non-streamlined regulation as a communications common carrier service.[9] The Virtual Collocation Order required non-exempt LECs to file tariffs offering virtual collocation service on September 1, 1994, to be effective on December 15, 1994.[10] In the Tariff Review Plan Order released concurrently with the Virtual Collocation Order, the Common Carrier Bureau (Bureau) instructed LECs to file certain cost support data in connection with all of their rates for virtual collocation.[11]

6. In conjunction with the Virtual Collocation Order, the Commission and the Tier 1 LECs reached an agreement on August 9, 1994 to facilitate an orderly transition to the Commission's mandatory virtual collocation regime. This agreement formed the basis for the D.C. Circuit's partial stay of the Bell Atlantic v. FCC mandate until December 15, 1994.[12] Pursuant to the agreement, the Tier 1 LECs agreed to file on September 1, 1994, "interim" virtual collocation tariffs that were identical in substance to the permanent virtual collocation tariffs to be filed on that same date. These interim tariffs were designed to serve the public interest by permitting interconnectors to continue to receive, on an uninterrupted basis, tariffed expanded interconnection service during the period between the effectiveness of the interim tariffs and the date the permanent virtual collocation tariffs become effective.[13]

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[8] Virtual Collocation Order, 9 FCC Rcd at 5156.

[9] Id. at 5156, 5166-67.

[10] Id. at 5156, 5167-68. The Commission stated that December 15 was the earliest date by which the Commission could ensure that these tariffs would have undergone adequate review by the Commission's staff. To prevent any lapse in the effectiveness of its overall expanded interconnection policy, the Commission stated its intention to ask the D.C. Circuit to stay the issuance of its mandate until December 15, 1994, by which time tariffs implementing the new virtual collocation rules could become effective. Id. at 5156.

[11] Commission Requirements for Cost Support Material To be Filed with Virtual Collocation Tariffs for Special Access and Switched Transport, Tariff Review Plan Order, 9 FCC Rcd 5679 (Com. Car. Bur. 1994) (Tariff Review Plan Order).

[12] See Letter from Mark L. Evans, Esq. on behalf of the Tier 1 LECs to William E. Kennard, Esq., General Counsel, FCC (August 9, 1994) (Letter Agreement).

[13] See generally Letter Agreement.

7. On September 1, 1994, Tier 1 LECs subject to the mandatory virtual collocation requirement filed interim and permanent virtual collocation tariffs.[14] In these tariffs, the LECs took the first step in the equipment tariffing procedure outlined in the Virtual Collocation Order. That process was intended to ensure compliance with two basic requirements of the mandatory virtual collocation regime: that LECs offer virtual collocation using the type of transmission equipment reasonably requested by interconnectors, and that LECs offer virtual collocation through generally available tariffs. Pursuant to the Commission's equipment tariffing process, prospective users of virtual collocation equipment were permitted to request that LECs include in their tariffs rates for specific types of equipment that they were likely to use initially. LECs were required to include specific rates for equipment requested on or before August 1 in their September 1 tariff filings. By October 3, 1994, LECs were required to amend their initial tariffs to include specific rates for equipment identified by interconnectors after August 1, but no later than September 1, 1994.[15]

8. The Commission's equipment tariffing procedure was also designed to permit LECs and interconnectors to arrive jointly at reasonable purchase prices for interconnector-designated transmission equipment.[16] According to the Virtual Collocation Order, these purchase prices were to serve as the basis for the LECs' virtual collocation equipment rates. The Commission stated, however, that it did not intend to limit the LECs' ability to use financial arrangements other than purchasing equipment outright from third parties. The Commission therefore concluded that LECs, if they wish, may offer to purchase equipment from interconnectors for a nominal amount (e.g., $1), and make it available for resale to the interconnectors for the same amount. The Commission declined, however, to require that LECs offer such an arrangement.[17] In their virtual collocation tariffs most LECs adopted this

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[14] The other Tier 1 LECs subject to expanded interconnection requirements elected to provide physical collocation under tariff, subject to non-streamlined regulation as a communications common carrier service. These LECs, therefore, are exempt from the mandatory requirement for a general virtual collocation offering.

[15] Virtual Collocation Order, 9 FCC Rcd at 5171. The Commission specified that interconnectors may continue to specify equipment during the period from September 1 to December 15, but the LEC may treat such requests as if they were received on the day after the tariffs become effective. The Commission further stated that after the initial tariffs become effective, interconnectors may continue to specify additional types of equipment, and request that the LEC modify its tariff to include rates for such equipment. According to the Virtual Collocation Order, the LEC will be required to modify its tariff within 30 days of receiving a request, with the changes scheduled to become effective on 30 days notice. The Commission concluded that such a procedure would enable interconnectors to make rapid modifications to upgrade their networks -- thus encouraging technological progress. Id.

[16] See id at 5188.

[17] Id. at 5189.

type of "$1 sale and repurchase" arrangement. SWB, US West, and CBT based their rates on the prices of transmission equipment purchased directly from third-party vendors.[18]

9. On September 2, 1994, the Bureau released its Virtual Collocation Interim Tariff Suspension Order.[19] The Bureau concluded that based on its preliminary review, the interim tariffs raised significant questions of lawfulness that warranted suspension for one day, investigation, and imposition of an accounting order.[20] The interim tariffs became effective on September 4, 1994, subject to investigation, and are currently scheduled to be replaced by the permanent tariffs on December 15, 1994.[21]

10. Eight parties filed petitions against the LECs' virtual collocation tariffs on October 14, 1994.[22] The parties' petitions included requests that the Commission: (1) partially

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[18] CBT, however, states in its reply comments that it does not prohibit a $1 sale and repurchase arrangement. CBT Reply at 6-7. We note that US West accompanied its September 1 tariff filings with a petition for extension of time to complete its virtual collocation tariffs. US West stated that during the week of September 1, it expected to include specific rates for all requested virtual collocation equipment. US West Petition for Extension of Time at 3. On September 19, 1994, US West filed revisions to include rates for interconnector-designated equipment. Because we find that US West has demonstrated good cause for a short extension of time, we grant US West's petition for extension of time.

[19] See Ameritech Operating Companies et al., Order, CC Docket No. 94-97, 9 FCC Rcd 5230 (Com. Car. Bur. 1994) (Virtual Collocation Interim Tariff Suspension Order).

[20] Virtual Collocation Interim Tariff Suspension Order, 9 FCC Rcd at 5231. The Bureau stated that it would designate specific issues and establish a pleading cycle in a subsequent order. Id.

[21] Since September 4, 1994, SWB and BellSouth have filed revisions to their interim tariffs. The Bureau determined that these transmittals raised the same issues as the tariffs subject to the Virtual Collocation Interim Tariff Suspension Order, and therefore warranted suspension for one day, investigation, and imposition of an accounting order. See In the Matter of Southwestern Bell Telephone Company, Revisions to Tariff F.C.C. No. 73, Transmittal No. 2396, CC Docket No. 94-97, DA 94-1252, released Nov. 10, 1994; In the Matter of BellSouth Telecommunications, Inc., Revisions to Tariff F.C.C. No. 1, Transmittal No. 243, CC Docket No. 94-97, DA 94-1295, released Nov. 22, 1994.

[22] These petitioners and the LECs against which they filed are listed in Appendix B. The abbreviations for the parties as indicated in the Appendix are used throughout this Order. We note that some petitioners protested the interim virtual collocation tariffs in addition to the permanent virtual collocation tariffs.

reject some of the tariffs;[23] (2) completely reject some of the tariffs, and partially suspend most of the others;[24] (3) reject SWB's tariff and partially suspend all the other tariffs;[25] (4) either partially reject or impose a one-day suspension of all of the tariffs;[26] and (5) suspend for one day and investigate some or all of the tariffs.[27] All of the tariffs were protested by one or more parties. Eight LECs filed replies to the petitions.[28] For the reasons discussed below, we grant the petitions in part and deny them in part.

III. DISCUSSION

A. Rate Levels

1. Overhead Loadings

11. Background. In its Virtual Collocation Order, the Commission reaffirmed its earlier decision that the LECs must justify any proposal to assign greater overhead loadings to

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[23] See Jones Lightwave Petition at 1 (urging partial rejection of US West's tariff); McLeod Petition at 1 (seeking partial rejection of US West's tariff); Cablevision Petition at 1 (requesting partial rejection of Ameritech's and Bell Atlantic's tariffs). Jones Lightwave also urges the Commission to act pursuant to its authority under Section 205 of the Communications Act, 47 U.S.C. § 205, to prescribe just and reasonable rates based on high capacity service cost data previously filed by US West. See Jones Lightwave Petition at 8 n.10, 9.

[24] Teleport Petition at 1-4 (objecting strongly to SWB's and US West's tariffs).

[25] Time Warner Petition at 40-41.

[26] MFS Petition at 1-2, 7.

[27] ALTS Petition at 1 (requesting suspension and investigation of some of the LECs' tariffs); MCI Petition at 1 (requesting suspension and investigation of all of the LECs' tariffs).

[28] The replies to the petitions to reject or suspend and investigate the virtual collocation tariffs were due on October 31, 1994. SWB and United filed their replies on November 1, 1994, concurrently with motions to accept late-filed replies. SWB asserts that its courier failed to retrieve SWB's reply from SWB's office in time for the pleading to be filed with the Commission on October 31. SWB Motion at 1. United contends that due to a corporate software upgrade, its pleading could not be printed correctly in time for filing on October 31. United Motion at 1. Because we find that SWB and United have shown good cause for their short delay in filing replies, we grant their motions and accept their replies.

expanded interconnection service than are assigned to "comparable services."[29] The Commission explained that LECs have the burden of demonstrating that their connection charges meet this overhead loading standard, and are otherwise just, reasonable, and not unreasonably discriminatory.[30] To this end, the Commission noted that the price cap LECs may be required to submit additional information to enable the Commission to verify that the overhead loadings assigned to expanded interconnection services do not unreasonably differ from those assigned to comparable services.[31]

12. The Bureau, in the earlier Special Access Physical Collocation Tariff Suspension Order, sought to compare the LECs' proposed overhead loadings for expanded interconnection through physical collocation with overhead loadings for comparable special access services, such as DS1 and DS3 services.[32] In a subsequent designation order, the Bureau requested detailed overhead data for individual comparable services. In that order, the Bureau refined its definition of "comparable" services to include all generic DS1 and DS3 services, including those subject to discounted volume and term pricing plans and any specialized services.[33] Because the Bureau did not receive adequate overhead loading data regarding comparable services in response to the foregoing requests, we issued another detailed request for overheads and cost support data concurrently with the Commission's Virtual Collocation Order in our Tariff Review Plan Order.[34] In that order, we further refined our definition of comparable services, as explained below, and sought more detailed cost support data.

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[29] Virtual Collocation Order, 9 FCC Rcd at 5189 (citing Special Access Physical Collocation Order, 7 FCC Rcd at 7429; Switched Transport Physical Collocation Order, 8 FCC Rcd at 7419). For purposes of this order, an overhead loading is defined as the percent by which a rate exceeds the direct cost for a particular service. An overhead loading of 80 percent, for example, raises total costs (and hence the rate) 80 percent above the level of direct cost. To derive the "overhead loading factors" shown in Appendix C, the LECs divided total cost by direct cost for each rate element. Hence, an overhead loading of 80 percent, for example, is equivalent to an overhead loading factor of 1.80.

[30] Id.

[31] Id. at 5189.

[32] See Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection for Special Access, CC Docket No. 93-162, 8 FCC Rcd 4589 (Com. Car. Bur. 1993)(Special Access Physical Collocation Tariff Suspension Order).

[33] Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection for Special Access, CC Docket No. 93-162, 8 FCC Rcd 6909 (Com. Car. Bur. 1993)(Special Access Physical Collocation Designation Order).

[34] Tariff Review Plan Order, 9 FCC Rcd at 5682-83.

13. Petitions. Petitioners assert that several LECs, such as Ameritech, SWB, and Bell Atlantic, have higher overhead loading factors for virtual collocation rate elements than for rate elements associated with competitive services offered to LEC customers. They ask the Commission to prescribe reasonable factors consistent with those reflected in other comparable LEC services.[35] MFS maintains that the LECs' pricing practices constitute a discriminatory "price squeeze," whereby a wholesale supplier, who also sells at retail, charges high rates to its wholesale customers so that they cannot compete effectively with the supplier's retail rates. According to MFS, LECs are loading a greater proportion of common costs onto interconnectors than are borne by the customers of the LECs' high capacity services whom MFS and others are competing to serve. MFS contends that this pricing practice effectively forces LEC competitors to subsidize the LEC services against which they compete.[36] MFS, ALTS, and Time Warner also assert that the LECs' overhead loading methodologies result in double-counting of some costs, e.g., administration expense. These parties claim that such costs are not only recovered once, as a direct cost assigned to one of the rate elements, but are also recovered a second time as part of the overhead loadings assigned to other rate elements.[37]

14. Replies. Bell Atlantic and BellSouth respond that the overhead loadings of their virtual arrangements are below or comparable to loadings on their high capacity offerings.[38] In particular, Bell Atlantic contends that it used the same factor for the nonrecurring charge for competitive end user DS3 services that it used for its DS3 cross-connect nonrecurring charge.[39] Bell Atlantic asserts that, for recurring charges, the overhead loading in its collocation filing is lower than those assigned to its comparable DS1 and DS3 end user services, which belies MFS's claim that the collocation rates subsidize Bell Atlantic's DS1 and DS3 services.[40] Ameritech submits that petitioners' comparisons fail to include rate elements of comparable services with factors similar to those used for interconnection.[41]

15. SWB questions the relevance of any overhead comparisons that focus on the overhead loadings applied to only one service out of the hundreds of high capacity access services it offers. SWB asserts that the Commission did not intend that "comparable services"

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[35] See, e.g., MFS Petition at 14-15; Cablevision Petition at 3, 8-9.

[36] MFS Petition at 13-14.

[37] Id. at 26; ALTS Petition at 6-7; Time Warner Petition at 35-37.

[38] Bell Atlantic Reply at 8; BellSouth Reply at 11.

[39] Bell Atlantic Reply at 8.

[40] Id.

[41] Ameritech Reply at 7.

include all these high capacity services but, rather, only the DS1 and DS3 services.[42] SWB maintains that it was not ordered to apply overhead loadings consistent with the lowest priced DS1 or DS3 services, or a particular DS1 or DS3 rate element, such as channel terminations. According to SWB, the amount of overhead in its proposed virtual collocation rates is no higher than the overhead reflected in comparable recurring rates. SWB avers that it used the classification of DS1 and DS3 services contained in the DS1 and DS3 subindex of the price cap Trunking Basket -- a classification that was not challenged when used in SWB's 1993 physical collocation filing.[43] Moreover, SWB argues, the Virtual Collocation Order did not require LECs to disregard services with the highest amount of overhead. SWB asserts that, since the overhead reflected in collocation rate elements cannot be higher than that contained in comparable LEC services, the average overhead reflected in all DS1 and DS3 elements "effectively becomes the overhead ceiling on collocation elements."[44] Finally, several LECs deny that overhead costs are included in specific rate elements and are also recovered in overhead factors.[45]

16. Discussion. For most LECs, one of the primary factors affecting the total charge for virtual collocation is the LECs' choice of overhead loadings. US West, for example, use an overhead loading of 72 percent for most recurring charges. This loading raises total cost, and hence the rate, 72 percent above the level of the corresponding direct cost. Bell Atlantic uses an overhead loadings of 65 percent for most recurring charge elements. Significantly, these two companies and SWB not only use some of the highest overhead loadings reported by the LECs, but also impose the highest total charges for virtual collocation service. For example, the monthly total charge per DS1 for providing interconnection for 100 DS1 circuits, excluding the termination equipment charge, is $79 for Bell Atlantic and $33 for both SWB and US West. These charges far exceed those of other large LECs, who impose charges ranging from $8 (for CBT and certain United companies) to $23 (for GSTC California).[46]

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[42] SWB Reply at 18.

[43] Id. at 20.

[44] Id. at 21.

[45] See, e.g., Bell Atlantic Reply at 6-7, 9-10; BellSouth Reply at 12-13.

[46] Some costs are recovered through recurring charges by some LECs and through nonrecurring charges by others. A comparison of LEC rates therefore is greatly facilitated by aggregating each LEC's recurring and nonrecurring charges together into a single equivalent rate. To accomplish this, we converted all nonrecurring charges into equivalent recurring rates by assuming that the nonrecurring charges are recovered monthly over a five-year period and that the LECs would earn 11.25 percent interest on unpaid balances during that period. In addition, our comparison of LEC rates is also facilitated by excluding the charges for termination equipment. This exclusion is necessary due to the large differences we observed

17. The overhead loading standard set forth in the Virtual Collocation Order states that, if a LEC chooses to use nonuniform overhead loadings, it may not recover a greater share of overheads in charges for expanded interconnection services than it recovers in charges for comparable services, absent justification.[47] To obtain the overhead loadings that LECs had assigned to comparable services, we first identified these services. In the Tariff Review Plan Order, we determined that the DS1 and DS3 virtual collocation services are comparable to all point-to-point DS1 and DS3 services.[48] All these services engage the same basic types of equipment in the LECs' central offices. They all require, for example, a central office entrance cable, an equipment bay containing an optical line terminating multiplexer (OLTM), and a cross connect. Moreover, this DS1- and DS3-level central office equipment constitutes a substantial, if not predominant, share of the total cost for all these services. Further, even SWB concedes that these DS1 and DS3 services are comparable to the virtual collocation services.[49]

18. We also determined that LECs offer these point-to-point services in two basic forms: (a) as a service providing channel termination without interoffice mileage and (b) as a

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in the treatment of that equipment under various LEC tariffs. Whereas most LECs provide termination equipment under an arrangement whereby they acquire it from the interconnector for $1, several LECs charge a rate they claim is based on the much greater cost of acquiring the equipment from the manufacturer. A comparison of these higher rates for termination equipment must await our investigation. The LECs imposing such rates generally did not provide sufficient information regarding the type of termination equipment that will be used for us to fully assess the reasonableness of these rates.

[47] Virtual Collocation Order, 9 FCC Rcd at 5189.

[48] Tariff Review Plan Order, 9 FCC Rcd at 5682-83. We note that a point-to-point service provides a connection between the customer premises (which, for an interexchange carrier, likely would be its point of presence) and another location, which may be another customer premises or LEC central office.

[49] SWB Reply at 18, 20. Although SWB recognizes these services are comparable, it nonetheless fails to compare them properly. To justify its overall rate for virtual collocation, SWB compares it to the much higher rate it charges for DS1 electrical channel termination service. Absent any adjustment to allow for differences in equipment requirements, this comparison is flawed. The latter service not only requires termination equipment at the LEC central office (as does virtual collocation service) but also requires such equipment to be provided by the LEC at the customer premises, thereby approximately doubling the equipment cost. Moreover, the electrical channel termination service requires a cable several miles longer than the short intraoffice cable required for virtual collocation. See id. at 18.

service providing both channel termination and interoffice mileage.[50] These basic services are further distinguished in LEC tariffs as special or switched access; by providing electrical or optical termination; by offering volume and term discounts; and by offering a specialized feature such as a self-healing network.[51] After defining comparable services in this manner, we requested that LECs identify the overhead loadings applied to each of these services and provide the underlying cost data used in calculating the loadings.[52]

19. Next, we determined whether any LECs had chosen to use uniform overhead loadings for all of their DS1 and DS3 services. The submitted overheads data show that none has done so. On the contrary, all LECs report wide variations in the loadings applied to their comparable DS1 and DS3 services. Bell Atlantic, for example, reports loadings ranging from 23 percent to 486 percent. BellSouth reports loadings ranging from 17 percent to 727 percent, and GSTC reports loadings ranging from 2 percent (in California) to 2,581 percent (in Washington).

20. In view of the LECs' use of nonuniform overhead loadings, the third step in our analysis was to compare the loadings assigned to virtual collocation service with those assigned to the comparable DS1 and DS3 services and to determine if the observed differences have been justified.[53] The information submitted by the LECs in support of their

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[50] Because a channel termination facility connects the customer premises to the nearest central office, interoffice mileage is not needed unless the customer wants to be connected to another central office.

[51] Because LECs combine these service features in numerous ways, most of the larger LECs offer nearly fifty different point-to-point DS1 and DS3 services. Indeed, US West offers such a variety of volume and term discounts that it identifies 396 tariffed services. If a LEC uses traffic-density zone pricing within study areas, the number of services (and hence loading factors) may double or triple, depending on the extent to which services are offered in all three zones. To reduce the reporting burden on the LECs, and to avoid having multiple virtual collocation rates within a single study area, we accepted Zone 1 overheads data as sufficient.

[52] Tariff Review Plan Order, 9 FCC Rcd at 5682-83.

[53] As explained in paragraph 12, supra, the Bureau has sought to make such a comparison of overhead loadings since the LECs filed their initial special access expanded interconnection tariffs in 1993. Those tariffs, however, failed to provide adequate data to permit the Bureau to compare the LECs' proposed loadings to loadings applied to comparable services. In the absence of such data, the Bureau compared the LECs' proposed loadings with the LECs' Automated Reporting Management Information System (ARMIS) data for the special access category as a whole. See Special Access Physical Collocation Tariff Suspension Order, 8 FCC Rcd at 4602. The Bureau requested detailed overhead data in a subsequent designation order, but was unable to obtain overhead cost showings sufficient to

proposed rates shows substantial differences between the loading factors they propose to apply to their charges for expanded interconnection services and those currently applied to comparable services. Bell Atlantic, for example, proposes to assign loadings of 65 percent to collocation recurring charges while assigning loadings as low as 23 percent to the comparable services. US West proposes to assign overhead loadings of 72 percent to most collocation rate elements while assigning loadings as low as 27 percent to the comparable services.

21. Moreover, none of the LECs attempted to show that these wide variations in loadings are due to differences in the overhead costs actually incurred by individual services. On the contrary, the LECs generally concede this is not the case. Bell Atlantic explains that the variation in its loadings is due to market forces.[54] BellSouth asserts that the variation is due to three pricing considerations: market conditions; the need to maximize a service's contribution to revenue targets; and the price-cost relationship existing prior to price cap regulation.[55] US West states that it distributes overhead costs among its product offerings without regard to the actual incurrence of such costs.[56] And SWB submits that the overhead loading it assigns to a particular service depends primarily on market conditions.[57] Based on the LECs' statements and submitted cost data, we conclude that the great disparity exhibited in overhead loadings primarily reflects market conditions. It appears that LECs tend to assign low overheads in markets where they face actual or potential competition from interconnectors and assign high overheads where they do not.

22. It further appears that the Commission's policy of promoting competitive entry into the local exchange market would be frustrated by the practice of assigning high overheads to the LEC facilities upon which interconnectors rely to provide competitive services while assigning low overheads to the very services against which interconnectors are trying to compete. That is, in providing interconnection facilities, LECs are selling a

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allow it to assess the reasonableness of the LECs' proposed overhead loadings. See generally Special Access Physical Collocation Designation Order. Given that the LECs had failed to justify adequately their proposed overheads, the Commission continued to rely on ARMIS-based overhead levels, pending a final determination as to what level of overhead is just and reasonable for expanded interconnection services. See generally Special Access Physical Collocation Interim Overhead Order.

[54] Bell Atlantic Tariff Review Plan, Transmittal No. 692, at 16.

[55] BellSouth Tariff F.C.C. No. 1, Transmittal No. 223, Description & Justification at 3-33.

[56] US West Reply at 29.

[57] SWB Reply at 16.

productive input to firms against which they compete in downstream end-user markets.[58] It therefore is unreasonable, absent justification, for LECs to use high overheads to raise prices of the services needed as inputs by their competitors while simultaneously using low overheads to reduce prices of the end-user services sold in competition with those same rivals.

23. SWB is correct in observing that the Commission has not ordered LECs to apply overhead loadings that are equal to the lowest overhead loadings assigned to other DS1 or DS3 customers. SWB is incorrect, however, in concluding that this implies that the only limitation on virtual collocation overheads is an overhead ceiling equal to the average overhead loading for all DS1 and DS3 services combined. An "average overhead loading" standard would not preclude LECs from employing the discriminatory practice described above. If a LEC were to use an average overhead loading factor for services provided to interconnectors and a below-average loading factor for LEC services with which the interconnectors compete, the effect would be to hamper the ability of the interconnectors to compete effectively. Moreover, the broad standard adopted by the Commission neither supports SWB's position nor limits our authority to establish the level of overhead loading that is reasonable, based on our analysis of the submitted cost and rate data.[59]

24. Thus, based on the current record, we conclude that in their tariff support materials, most LECs have failed to justify their proposals to recover a greater share of overhead costs in charges for expanded interconnection services than they recover in charges for comparable services. We therefore conclude that most of the LECs' rates for virtual collocation are likely to be unreasonably high. To prevent apparently excessive rates from becoming effective while we investigate the LECs' overall proposed rate levels, we will partially suspend those rates that appear unreasonable during the remainder of the five-month suspension period pursuant to our authority under Section 204(a) of the Communications Act, 47 U.S.C. § 204(a). Our partial suspension will permit rates that do not appear to be unreasonable to become effective, subject to an investigation and an accounting order, but will prevent apparently unreasonable rates from taking effect.

25. Accordingly, pursuant to our authority under Section 204(a) of the Communications Act, we suspend the LECs' entire rates for one day, and for the remainder of the five-month suspension period we suspend the part of the rate that exceeds the levels justified by the present record. Companies are required to reduce and refile their expanded

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[58] We are unpersuaded by SWB's claim that, although its overhead loadings may reduce interconnectors' profit levels, its overhead loadings do not deter competitive entry. SWB provides no support for its claim, and fails to demonstrate that the rates it proposes are just and reasonable.

[59] See Virtual Collocation Order, 9 FCC Rcd at 5189 (citing Special Access Physical Collocation Order, 7 FCC Rcd at 7429).

interconnection rates to the levels resulting from multiplication of their filed rates by the relevant Rate Adjustment Factors (RAFs) set forth in Appendix C to this order.[60] These RAFs, when multiplied by the originally filed rate levels, will result in the following adjusted rates: (a) the rate for each rate element dedicated to DS1-level expanded interconnection services will reflect the lowest overhead loadings assigned to the LECs' comparable DS1 services; (b) the rate for each rate element dedicated to DS3-level expanded interconnection services will reflect the lowest overhead loadings assigned to the LECs' comparable DS3 services; and (c) the rate for each rate element that potentially may be used with both DS1- and DS3-level expanded interconnection services will reflect the lowest overhead loadings assigned to any comparable service, regardless of whether that service is provided at the DS1- or DS3-level.[61]

26. A rate element is dedicated to DS1 or DS3 expanded interconnection services if interconnectors would only purchase that element to provide services to customers at the DS1 or DS3 level, respectively. Because the transmission level of the cross-connects determines whether the expanded interconnection service can accommodate services to customers at the DS1- or DS3-level, we consider a rate element dedicated to DS1-level interconnection if it would only be acquired together with DS1-level cross connects. Similarly, we consider a rate element dedicated to DS3-level interconnection if it would only be acquired together with DS3-level cross connects. Finally, we consider a rate element nondedicated if it potentially may be used with either DS1- or DS3-level cross connects. A rate element for termination facilities, for example, is nondedicated if interconnectors might want to acquire it together with DS1- or DS3-level cross connects. Although we do not partially suspend some LECs' rates in this order because their overhead loading factors for virtual collocation appear to comport with the Commission's overhead loading standard, we intend to examine all LECs' overhead loadings during our investigation.

27. We believe that these overhead adjustments will facilitate the Commission's goal of encouraging economically efficient competition. During the pendency of this

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[60] In addition to showing the RAFs, Appendix C shows the direct costs and overhead factors reported by all LECs subject to RAFs except SWB. The Bureau deemed SWB's cost support submission exempt from disclosure under Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), subject to limited disclosure to the parties to the parties under a protective order. Because SWB has filed an application for review of the Bureau's ruling, limited disclosure of SWB's cost support data must be deferred pending Commission review of the Bureau ruling. See Letter from Kathleen M.H. Wallman, Chief, Common Carrier Bureau, to MFS, MCI, and ALTS, Freedom of Information Act Request Control Nos. 94-310, 325, 328, DA 94-1214, released Nov. 1, 1994, app. for rev. pending.

[61] If a LEC uses traffic-density zone pricing for its DS1 or DS3 services, we used the lowest rates tariffed for Zone 1 for establishing the overhead loading for the entire study area so as to avoid producing multiple rates for virtual collocation service in the same study area.

investigation, the adjustments will extend to interconnectors the same treatment of overhead assignment that the LECs give their most favored DS1 or DS3 customers. In this way, the adjustments will prevent unreasonable discrimination against the interconnectors that seek to compete with the LECs in the interstate access service market.

28. We note that the partial rate suspension ordered here may not completely resolve the issue of excessive overheads. As part of the investigation initiated in this order, LECs may be required to make additional showings, to be specified in a subsequent designation order.

2. Bell Atlantic's Maintenance-Related Charges

29. Background. In general, maintenance is a recurring expense associated with keeping facilities in good operating condition. Such expenses usually include engineering work, general supervision of maintenance workers, equipment testing, and other labor and materials incurred in the upkeep of plant. In addition to maintenance expense, Bell Atlantic apparently incurs maintenance-related administration expenses. Bell Atlantic estimates that, when maintaining customer-designated electronic equipment, these related administration expenses exceed the direct maintenance expenses by eight percent.[62] While most LECs recover these maintenance-related expenses on a time and materials basis in their tariffs, Bell Atlantic recovers them through two monthly recurring flat charges. One charge is the Cable Support Fee, which recovers the expenses incurred to maintain the entrance cable. The other charge is the DS1 Connection Service rate, which essentially recovers the expenses incurred to maintain customer-designated termination equipment.

30. Petitions. Teleport contends that Bell Atlantic's monthly recurring charges for maintenance are excessive. Teleport states that it is unclear whether these charges cover labor, equipment, or both. Teleport further avers that Bell Atlantic's maintenance appears to be covered by its overstated "service connection" fee.[63] MFS also claims that Bell Atlantic's Cable Support Fee and DS1 Connection Service charge are excessive. MFS asserts that, although the DS1 Connection Service charge recovers the cost of maintaining only interconnector-designated termination equipment, that charge far exceeds the expense Bell Atlantic reports for maintaining an entire channel termination, which includes all electronic equipment as well as internal cabling.[64]

31. Replies. Bell Atlantic argues that, because it recovers maintenance expense through a flat monthly rate rather than on the time-and-materials basis used by most other LECs, the Commission must exclude the equipment maintenance component from the LECs'

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[62] Bell Atlantic Tariff Review Plan, Maintenance and Repair Function Table.

[63] Teleport Petition, App. A, Item 4 at 1-2.

[64] MFS Petition at 24-25.

virtual collocation rates in order to properly compare these rates.[65] Bell Atlantic contends that such a comparison will show that its charge for an equivalent DS1 circuit is among the lowest of any "comparable rates" filed by any LEC.[66] Bell Atlantic also maintains it is improper for MFS to compare Bell Atlantic's rate for Connection Service to its maintenance expense for a channel termination. Bell Atlantic states that the rate in question not only includes maintenance expense but also costs association with land and buildings, cable, a fiber distribution frame, and overhead loadings.[67] Bell Atlantic avers that the comparable costs used in calculating its collocation rate are more than 40 percent lower than the costs used for the end user tariff.[68]

32. Bell Atlantic submits that based upon petitioners' comments, it is willing to remove its flat maintenance charge and instead offer maintenance of dedicated equipment on a time and materials basis during an "interim period."[69] Bell Atlantic maintains that since it has little experience from which to derive a flat rate, both Bell Atlantic and its customers would benefit from the resulting information regarding the maintenance needs of the various types of designated equipment.[70]

33. Discussion. Even after our partial disallowance of Bell Atlantic's proposed overhead loadings, Bell Atlantic's total charge for DS1 virtual collocation still appears excessive due to its maintenance-related expenses. As we noted earlier, Bell Atlantic's total charge for virtual collocation essentially excludes the cost of termination equipment because Bell Atlantic acquires such equipment for $1 under a "purchase/leaseback" arrangement with interconnectors. Even so, Bell Atlantic's total virtual collocation service charge is almost as high as that imposed by several other LECs that acquire termination equipment from the manufacturer at full market price. Given that termination equipment accounts for most of the

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[65] Bell Atlantic Reply at 3.

[66] Id. at 6.

[67] Id. at 4-5.

[68] Id. at 5-6.

[69] Id. at 4.

[70] Id. Bell Atlantic claims, however, that a time and materials charge carries more administrative burdens and less certainty than a flat charge. Bell Atlantic declares that, after it has gained experience, and based upon evolving technology, it will consider other alternatives to the flat charge for tariffing equipment maintenance. Id.

costs associated with virtual collocation service, Bell Atlantic must justify its apparently high total charge for this service.[71]

34. We agree with Bell Atlantic that it is improper for MFS to compare Bell Atlantic's rate for collocation service to its maintenance expense for a particular channel termination service. The collocation service rate includes other costs in addition to maintenance expense. For the comparison to be meaningful, the maintenance-related expenses of both services should be compared. Such a comparison, although different from that performed by MFS, nonetheless supports MFS's conclusion that Bell Atlantic's maintenance charges are excessive. Specifically, Bell Atlantic claims its monthly total maintenance-related expense, including the maintenance-related administration expenses, for its DS1 virtual collocation service is $64.71. That amount far exceeds the $21.20 total maintenance-related expense that Bell Atlantic attributes to its comparable DS1 electrical channel termination service,[72] which uses the same basic types of equipment but requires twice the amount of equipment. Although both services require the provision of a DS1-level optical line terminating multiplexer in the LEC central office, the electrical channel termination service also requires the LEC to provide this equipment at the customer premises. Further, although both services require the provision of a short length of cable inside the LEC central office, the electrical channel termination service also requires the LEC to provide several miles of cable outside the central office to connect it to the customer premises. Bell Atlantic therefore has to maintain twice as much electronic equipment, and several additional miles of cable, in providing DS1 electrical channel termination service than it does in providing virtual collocation service.[73]

35. Bell Atlantic's reported $64.71 expense for virtual collocation apparently includes $38.04 in maintenance-related expenses for maintaining the short length of cable inside the central office. As noted above, when Bell Atlantic provides channel termination service, it incurs only $21.20 in expenses to maintain both a cable several miles long as well as twice the electronic equipment used for collocation. We therefore conclude that it appears

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[71] Data submitted by CBT and US West indicate that termination equipment constitutes 92 percent and 55 percent of monthly total costs, respectively. These estimates are based on monthly total costs that include both recurring and nonrecurring costs. The nonrecurring costs were included by assuming they are recovered monthly over five years at 11.25 percent interest.

[72] Bell Atlantic Tariff Review Plan, Updated Exhibit 7, at 1.

[73] When a LEC provides a DS1 electrical termination, it installs termination equipment at both the customer premise and the central office. By contrast, when it provides virtual collocation service, it installs interconnector-designated equipment only at the central office. Teleport refers to this basic difference in equipment requirements to support its view that the average investment required for DS1 virtual collocation is less than half that required for a typical DS1 installation. See Teleport Petition, App. A, Item 2 at 3.

unlikely Bell Atlantic incurs twice the expense to maintain a much shorter cable and none of the electronic equipment.

36. Because DS1 electrical channel termination service requires twice as much investment in the same types of equipment and facilities used by DS1 virtual collocation service, and because Bell Atlantic estimates the level of maintenance-related expenses for a particular service by assuming that such expenses are directly related to investment required by the service,[74] we can obtain an apparently reasonable estimate of maintenance expense for virtual collocation by reducing Bell Atlantic's $21.20 maintenance expense (reported for DS1 electrical channel terminations) by half to reflect this fundamental difference in investment requirements. On this basis, we estimate total maintenance expense for DS1 virtual collocation to be no more than $10.60. Given Bell Atlantic's failure to justify its proposed maintenance charges, we will reduce Bell Atlantic's recovery of total maintenance expense to this level by disallowing 83.6 percent of the $26.67 in maintenance expenses (and maintenance-related administrative expenses) recovered through the DS1 Connection Service rate and 83.6 percent of the $38.04 in maintenance expenses recovered through the Cable Support Fee.

37. Accordingly, pursuant to our authority under Section 204(a) of the Communications Act, 47 U.S.C. § 204(a), we suspend Bell Atlantic's Cable Support Fee and DS1 Connection Service rate for one day, and for the remainder of the five-month suspension period we suspend the part of these charges that exceeds the levels justified by the present record. Bell Atlantic must reduce and refile its expanded interconnection rates set at the levels resulting from the maintenance expense adjustments described above and from the multiplication of its filed rates by the relevant RAFs set forth in Appendix C to this Order. Bell Atlantic's RAFs, when multiplied by the originally filed rates for each of its rate elements, will result in rates that reflect the lowest overhead loadings assigned to Bell Atlantic's comparable services, as well as the maintenance expense assigned to these comparable services. By this action, we do not mean to discourage Bell Atlantic from filing revisions to its tariff during the pendency of this proceeding in order to address the concerns identified in this suspension.

38. We find that the approach set forth above is reasonable and will serve the public interest by promoting economically efficient competition in the interstate special access

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[74] Bell Atlantic explains that it developed maintenance factors for primary plant investments, e.g., circuit equipment investment, by dividing the maintenance expense associated with each primary plant account by the corresponding total investment. Bell Atlantic states that it then applied these maintenance factors to the various types of primary plant used by a particular service to attribute maintenance expense to that service. Bell Atlantic notes that it used a similar procedure, also based on unit investments, to attribute administration expenses to individual services. See Bell Atlantic Tariff Review Plan, Section 3, at 10-14.

and switched transport marketplace. Our upcoming designation order will address the other rate level issues that have been raised by the parties. Because of the LECs' use of disparate costing and pricing methodologies, we intend to seek additional data in our investigation concerning these issues.

B. Rate Structure

1. Recovery of Training Costs

39. Background. In the Virtual Collocation Order, the Commission reaffirmed its earlier decision, set forth in the Special Access Physical Collocation Order, that the rates, terms, and conditions for virtual collocation must be tariffed and made generally available,[75] and that LECs may not include in their tariffs individual case basis (ICB) rates, i.e., rates developed in response to individual customers' requests, for elements of virtual collocation recovering the cost of installation, maintenance, and repair of interconnector-designated equipment.[76]

40. The Commission recognized that if an interconnector selects equipment that a LEC does not currently use in a given central office, the LEC may need to provide training to its employees to install, maintain, and repair that equipment.[77] Our review of the virtual collocation tariffs reveals that BellSouth, GTE, and SWB recover the costs of training LEC technicians to perform equipment installation, maintenance, and repair on an individual case basis.

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[75] Virtual Collocation Order, 9 FCC Rcd at 5171 (citing Special Access Physical Collocation Order, 7 FCC Rcd at 7442-43). In the Virtual Collocation Order, the Commission made some changes in its pricing rules to ensure the reasonableness of generally available rates for virtual collocation services involving interconnector-designated equipment. Virtual Collocation Order, 9 FCC Rcd at 5187-88. These changes, discussed in paragraph 55, infra, replaced the Commission's rule in the Special Access Physical Collocation Order that the rates, terms, and conditions for interconnector-designated equipment may be individually negotiated, as long as they are subsequently tariffed and made generally available. See Special Access Physical Collocation Order, 7 FCC Rcd at 7442-43.

[76] See Virtual Collocation Order at 5174. The Commission reaffirmed that rates for installation, maintenance, and repair must be uniform for all virtual collocation customers in each central office, but may vary between central offices corresponding to cost differences. Id. (citing Special Access Physical Collocation Order, 7 FCC Rcd at 7442-43.)

[77] Id. at 5172-73. The Commission concluded, however, that customers should not be required to pay for costly training of LEC employees if the LEC uses qualified outside contractors to install, maintain, or repair LEC equipment. Id. at 5172.

41. Petitions. Several petitioners object to the rate structures LECs use to recover the cost of training LEC technicians to install, maintain, and repair interconnector equipment that differs from the type of equipment the LEC uses. MFS, for example, claims that these structures are so vague that interconnectors are unable to determine the magnitude of charges to which they may be subject.[78] MFS maintains that US West's tariff is unclear regarding the application of its tariffed half-hour labor rate, and that most of the other LECs, such as BellSouth, SWB, United, and Ameritech, have stated that training charges will be assessed on an individual case basis. MFS contends that these ICB provisions provide no basis for interconnectors to estimate the price of training, and thus violate the Commission's rules prohibiting overly vague tariff provisions.[79]

42. Time Warner argues that the Commission should reject an ICB approach and require LECs to tariff specific time and expense charges for each and every function, e.g., hourly rate, per diem, and travel expenses.[80] MCI agrees, asserting that the Commission clearly ruled that it will not permit LECs to individually negotiate the rates for expanded interconnection services. MCI contends that LECs should be required to file tariffs for all training fees to ensure that the rates are just and reasonable.[81]

43. Teleport, Cablevision, McLeod and Jones Lightwave urge the Commission to require LECs to provide more detailed terms and conditions regarding recovery of LEC technician training costs.[82] Jones Lightwave maintains that the tariffs should identify the equipment the LEC uses in its facilities so that interconnectors may avoid charges for training.[83]

44. Replies. BellSouth and SWB disagree with petitioners' suggestion that they develop averaged charges for training, and contend that several variables affect the cost of training which the LEC cannot know in advance, such as whether the training will take place in the same general area in which the arrangement is being installed.[84] SWB asserts that it

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[78] MFS Petition at 30.

[79] Id.

[80] Time Warner Petition at 17 (objecting to tariffs of Ameritech, BellSouth, and SWB because they do not limit training charges).

[81] MCI Petition at 14-15.

[82] Teleport Petition, App. A, Item 5 at 1; Cablevision Petition at 11; McLeod Petition at 7; Jones Lightwave Petition at 10-11.

[83] Jones Lightwave Petition at 14 n.12.

[84] BellSouth Reply at 7; SWB Reply at 42.

intends to charge interconnectors only for those training expenses incurred as a direct result of equipment requests.[85] According to SWB, the only "average" tariff charge that is appropriate is its additional labor charge to recover the cost of the employees' time spent in fulfilling the interconnectors' training requirements.[86]

45. GTE asserts that training costs cannot be identified until the interconnector informs GTE of the type of equipment and the LEC offices that the interconnector has selected for collocation.[87] GTE avers that it permits interconnectors to avoid training costs entirely by using standard GTE termination equipment, and submits that it will provide a list of standard equipment and cost estimates upon interconnector request.[88]

46. United explains that, contrary to petitioners' contentions, its "time and materials" approach to nonstandard equipment training charges is different from an ICB rate because the hourly cost of the technician is known; the only variable is the number of training hours required for the specific piece of equipment.[89] US West explains its training provisions, and states that it will amend its tariff to clarify its intentions regarding application of its labor rates.[90] Ameritech explains that under its training provisions, the interconnector may provide its own trainer, or contract directly with an outside training vendor.[91]

47. Discussion. We find that training is a function of equipment maintenance and repair, and thus conclude that the Virtual Collocation Order precludes ICB pricing for rate elements that recover the cost of training LEC technicians to service interconnector-designated transmission equipment. We therefore order BellSouth, GTE, and SWB to delete any

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[85] SWB Reply at 41-42.

[86] Id. at 42.

[87] GTE Reply at 16.

[88] Id. at 16-17.

[89] United Reply at 5.

[90] US West Reply at 47. US West also states that it would be willing to amend its tariff to specify the number of personnel to be trained and to make rate structure changes. Id.

[91] Ameritech Reply at 9. Further, Ameritech explains that it will not provide training for its personnel on equipment supplied by interconnectors that is not otherwise used by Ameritech, but it will pay the wages of its personnel during training. Ameritech states that when the interconnector chooses not to train any Ameritech personnel in advance, the interconnector must provide "real time" training if it is necessary, and pay Ameritech's hourly maintenance charges. Id.

references to ICB pricing,[92] and replace these provisions either with specific rates or time and materials charges.[93] With respect to time and materials charges, LECs should provide actual labor rates and material costs in their tariffs, as opposed to simply stating that they will recover the costs of training on a time and materials basis.

48. We also conclude that the training provisions of US West and Ameritech are unreasonably vague, in violation of the Virtual Collocation Order's requirement that the LECs' rate structures be "clear and easy to understand," and that the facilities and services provided under each rate element be clear on the face of the tariff.[94] Moreover, we believe that these vague provisions violate the Commission's rules requiring "clear and unambiguous" tariff provisions.[95] US West, in fact, acknowledges in its reply that it plans to amend its tariff to clarify application of its labor rates. Ameritech's detailed explanation of its training provision in its reply comments demonstrates the need for clarification of its tariff. Thus, we reject the foregoing provisions as patently unlawful, and order US West and Ameritech to remove these provisions and to refile tariff provisions that clarify their recovery of training costs in accordance with their reply comments. We will examine additional issues concerning charges that recover training costs in the investigation initiated in this order.

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[92] We find that, contrary to MFS's claim, United recovers the cost of training LEC technicians to service interconnector-designated equipment on a time and materials basis, rather than on an individual case basis.

[93] We note that we took similar action in our Special Access Physical Collocation Tariff Suspension Order, in which we reviewed, inter alia, the virtual collocation tariffs filed by those LECs that were not required to offer physical collocation service in certain central offices. We directed certain LECs to delete references to ICB pricing (except for the equipment dedicated to the virtual collocator) and to replace ICB rates either with specific rates or time and materials charges. See Special Access Physical Collocation Tariff Suspension Order, 8 FCC Rcd at 4602. In a subsequent order, we directed Bell Atlantic to delete an ICB rate for installation of virtual collocation equipment and to replace it with a specific rate or time and materials charges. See In the Matter of Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection for Switched Transport, 9 FCC Rcd 817 (Com. Car. Bur. 1994); see also Supplemental Designation Order and Order to Show Cause, CC Docket No. 93-162, 9 FCC Rcd 2742 (Com. Car. Bur. 1994) (designating additional issues regarding the LECs' use of time and materials charges in their physical collocation tariffs). As stated in footnote 75, supra, the Virtual Collocation Order set forth pricing rules to replace the Commission's earlier rule permitting ICB pricing for the equipment dedicated to the virtual collocator.

[94] See Virtual Collocation Order, 9 FCC Rcd at 5186.

[95] See 47 C.F.R. § 61.54.

2. Recovery of "Extraordinary Costs"

49. Background. In our Special Access Physical Collocation Designation Order, we asked LECs whose tariffs contain provisions allowing them to impose charges to recover additional, extraordinary, or individually determined costs (i.e., costs that are not specifically and individually listed in their tariffs) to explain why inclusion of such provisions is reasonable. The Bureau also directed LECs to define the term they use to permit recovery of such costs (e.g., additional, extraordinary).[96] In their virtual collocation tariffs, BellSouth, SWB, and United include provisions that permit them to impose charges to recover costs that are not specifically and individually listed in their tariffs.

50. Petitions. Claiming that it is anticompetitive, MFS and ALTS urge rejection of SWB's proposal to use ICB pricing for charges designed to recover "extraordinary costs that would not be incurred but for an interconnector's requirements."[97] ALTS demands that SWB define its rate structure now, not at some future time.[98] MFS also objects to United's provision stating that if "additional environmental controls" are required to accommodate the interconnector, the interconnector will be charged for them. MFS further objects to BellSouth's proposal to charge interconnectors "rates, terms and conditions that are unique to a virtual collocation arrangement."[99]

51. Replies. SWB defends its charges for recovery of "extraordinary costs" on the grounds that it is appropriate to track and bill these types of costs to the interconnector rather than to the general rate base. SWB avers that it is appropriate for an interconnector to pay for any labor or materials used to meet a request for that interconnector if that request involves activities not anticipated or required to provide virtual collocation for all interconnectors.[100] For example, SWB argues, if a request involves modifying floor space to accommodate equipment, it would not be appropriate to develop another nonrecurring charge to establish an average rate for "rare possible modifications" of floor space.[101] SWB insists that ratepayers should not bear an extraordinary cost caused by a single interconnector's request. According to SWB, recovery of these types of costs on an individual case basis is

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[96] Special Access Physical Collocation Designation Order, 8 FCC Rcd at 6917.

[97] MFS Petition at 18; ALTS Petition at 19-20.

[98] ALTS Petition at 20.

[99] MFS Petition at 31.

[100] SWB Reply at 40.

[101] Id. at 40-41.